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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MICHAEL T. FOX,

11 Plaintiff,

12 v.

13 U.S. ATTORNEYS OFFICE, FEDERAL
14 BUREAU OF INVESTIGATION, UNITED
15 STATES DEPARTMENT OF JUSTICE,
PAULA PATSON, RONALD PATSON,
GALVESTON POLICE DEPARTMENT, et al.,

16 Defendant.

Civil No. 07-cv-2388-DMS (POR)

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S REQUEST
FOR APPOINTMENT OF COUNSEL**

[Dkt. No. 3.]

17 Plaintiff, proceeding *in pro per* on a complaint of alleged civil rights violations, has
18 requested appointment of counsel under 42 U.S.C. § 2000e-5. For the following reasons, Plaintiff's
19 request is hereby DENIED WITHOUT PREJUDICE.

20 Plaintiff alleges civil rights violations from a broad government conspiracy against him and
21 his property. Plaintiff's complaint describes that he has recently driven throughout the United States
22 and Mexico in a mini-van, in which he also slept. While parked for the night in Galveston, Texas,
23 Plaintiff's vehicle was struck by another vehicle. It is Plaintiff's belief that this accident, which
24 caused him to lose the use of his vehicle, was staged by the federal government in order to destroy
25 his vehicle and as an attempt to take his life. (Dkt. No. 1 at 34.) Plaintiff alleges that other prior
26 automobile accidents which he has experienced were also perpetrated by local, state or federal
27 government officials. (Dkt. No. 1-3 at 36-42.) Plaintiff further believes that local police and the
28 federal government have made efforts to deprive him of insurance coverage for that accident and to

1 deprive him of legal representation as he has sought to bring this action.

2 Plaintiff's complaint also alleges that he is owed workers' compensation for injuries which
3 he suffered while working separate construction jobs in Florida in 1997 and in 2002. (Dkt. No. 1-4
4 at 67-89.)

5 Under 42 U.S.C. § 2000e-5, courts have discretion to appoint counsel "in such circumstances
6 as the court may deem just." 42 U.S.C. § 2000e-5(f)(1)(B). In exercising that discretion, the court
7 must consider three factors: "(1) the plaintiff's financial resources, (2) the efforts made by the
8 plaintiff to secure counsel, and (3) whether the plaintiff's claim has merit." Bradshaw v. Zoological
9 Society of San Diego, 662 F.2d 1301, 1318 (9th Cir. 1981).

10 **1. Plaintiff's financial resources**

11 Under 42 U.S.C. § 2000e-5(f)(1), "[a] lesser showing of indigency is required to satisfy the
12 test for appointment of counsel" than is required under a motion to proceed *in forma pauperis*. See
13 Bradshaw, 662 F.2d at 1319.

14 Plaintiff's request for counsel includes declarations of his assets as well as his debts. Though
15 Plaintiff declares that he owns no home and lives in a vehicle, he claims to own property in
16 Michigan that he values at two hundred thousand dollars. (Dkt. No. 3 at 6-7.) Plaintiff further
17 claims to owe money on various bank accounts or credit cards, with a total claimed debt of \$47,937.
18 (Dkt. No. 3 at 7.) Plaintiff's separate motion to proceed *in forma pauperis*, filed on December 20,
19 2007, provides similar information about Plaintiff's financial situation. (Dkt. No. 2.) In that motion,
20 Plaintiff estimates the value of his property in Michigan as being between one-hundred-and-fifty
21 thousand dollars and two hundred thousand dollars. (Dkt. No. 2 at 3.) Plaintiff also declares that he
22 received workers' compensation benefits beginning in October 2007, but that he was only entitled to
23 collect those through February 2008. (Dkt. No. 2 at 2.)

24 The Court does not find that Plaintiff's representation of his financial resources weigh in
25 favor or against the appointment of counsel. Though Plaintiff claims to have assets in excess of his
26 debts, his major asset is his ownership of a vacant lot in Michigan. Plaintiff himself estimates the
27 value of this land as being between one-hundred-and-fifty thousand dollars and two hundred
28 thousand dollars, but there is no indication made to this Court that this amount or any portion thereof

1 is readily available to Plaintiff as a means to secure counsel.

2 **2. Efforts made by the plaintiff to secure counsel**

3 Regarding the second factor required by Bradshaw v. Zoological Society of San Diego,
4 Plaintiff represents that he has made extensive efforts to secure counsel for his case, driving across
5 the country to do so. Plaintiff claims to have sought representation from attorneys in Michigan,
6 Florida, Virginia, Texas and Wyoming. (Dkt. No. 1 at 16, ¶ 70.)

7 According to Plaintiff, he sent his drafted complaint to “numerous attorneys in Texas.” (Dkt.
8 No. 1 at 7, ¶ 4.) One such law practice contacted by Plaintiff was the law firm of Whitehurst,
9 Harkness, Ozmun & Brees, in Austin, Texas. (Dkt. No. 1. at 53-55; Doc 1-2 at 44-46.) Another
10 practice contacted by Plaintiff was Crews & Elliott, also in Austin, Texas. (Dkt. No. 1-3 at 47; Dkt.
11 No. 1-4 at 54.) Also, the Law Offices of Jeremy F. Rosenthal in McKinney, Texas received
12 documentation of Plaintiff’s allegations. (Dkt. No. 1-5 at 50.)

13 Plaintiff has also sought representation from former-United States Senator John Edwards.
14 (Dkt. No. 1 at 7, ¶ 13.) Plaintiff further represents that he “went to Florida to see attorneys for
15 representation.” (*Id.* at 8, ¶ 15.) Plaintiff showed his drafted complaint to attorneys on both the
16 eastern and western coasts of Florida. (*Id.* at 8, ¶¶ 16-18.) Plaintiff also submitted his drafted
17 complaint to the American Civil Liberties Union’s chapter in Miami, Florida. (*Id.* at 14, ¶ 53A.)

18 From Florida, Plaintiff drove to Jackson Hole, Wyoming, and attempted to retain attorney
19 Jerry Spence. (*Id.* at 14-15, ¶¶ 55-67; Dkt. No. 1-4 at 66.) Plaintiff contacted the law offices of
20 Rittenberg, Samuel & Phillips of New Orleans, Louisiana as well. (Dkt. No. 1-3 at 47; Dkt. No. 1-4
21 at 55.)

22 Plaintiff has demonstrated an abundant effort to secure counsel to represent him.

23 **3. Whether Plaintiff’s claim has merit**

24 The third factor, whether Plaintiff’s claim has merit, weighs heavily in favor of denying
25 Plaintiff’s request for appointment of counsel.

26 Plaintiff’s complaint alleges that he is owed workers’ compensation for injuries suffered
27 while he was working in Florida in 1997 and in 2002. (Dkt. No. 1-4 at 67-89.) The remaining
28 allegations in Plaintiff’s complaint arise out of an automobile accident in Galveston, Texas, which is

1 in the jurisdiction of the United States District Court for the Southern District of Texas. The
2 complaint makes vague and often conclusory allegations about the identity and intent of various
3 people - many assumed by Plaintiff to be agents of the federal government - whom he has
4 encountered in recent years as he has traversed the country. These additional allegations bear no
5 apparent relation to Plaintiff's workers' compensation claims.

6 It is unclear from the complaint why Plaintiff believes that this Court has jurisdiction over
7 the claims arising out of his automobile accident in Galveston, Texas. Furthermore, Plaintiff's
8 allegations that federal government officials sought to destroy his vehicle, attempted to take his life
9 and have since frustrated his attempts to secure counsel are unsupported by claims that Plaintiff has
10 any proof of the federal government's involvement in these events beyond Plaintiff's own inferences
11 and postulations. Finally, Plaintiff's complaint does not state a prima facie claim for relief under 42
12 U.S.C. § 2000e, the statute under which he seeks appointment of counsel, because although Plaintiff
13 does allude to workers' compensation claims he does not allege an adverse employment action taken
14 because of his race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2.

15 Plaintiff has not demonstrated a sufficient likelihood of succeeding on his claim to warrant
16 an appointment of counsel under 42 U.S.C. § 2000e-5. Upon consideration of the factors applied in
17 Bradshaw v. Zoological Society of San Diego, 662 F.2d 1301 (9th Cir. 1981), the Court finds that
18 the circumstances of Plaintiff's case are not deserving of appointment of counsel.

19 **4. Whether Plaintiff may qualify for appointed counsel under 28 U.S.C. § 1915**

20 Having found that Plaintiff's complaint does not properly state a claim under 42 U.S.C. §
21 2000e, the Court considers whether, in the alternative, Plaintiff may qualify for appointed counsel
22 under 28 U.S.C. § 1915, which allows a district court to appoint counsel to an indigent litigant. In
23 the Ninth Circuit, a plaintiff who has met the requirement of indigence is entitled to appointment of
24 counsel in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986).
25 A plaintiff may also be required to demonstrate that a reasonably diligent effort has been made to
26 secure counsel. See, Bailey v. Lawford, 835 F. Supp. 550, 552 (S.D.Cal. 1993). The exceptional
27 circumstances required under Wilborn include the Plaintiff's likelihood of success on the merits and
28 his/her inability to articulate one's claims pro se. Wilborn v. Escalderon, 789 F.2d at 1331.

1 Plaintiff in this case has not met the threshold requirement of demonstrating indigence,
2 though he does meet the separate threshold requirement of demonstrating a diligent search for
3 representative counsel. Regardless, Plaintiff cannot meet the requirements of exceptional
4 circumstances. As discussed above, Plaintiff does not demonstrate a likelihood that he will succeed
5 on the merits of his complaint. Furthermore, Plaintiff has demonstrated in this action that he has the
6 ability to articulate his claims without the assistance of counsel. Plaintiff has articulated the facts of
7 his complaint coherently, though not succinctly. Plaintiff has also demonstrated an understanding of
8 the legal issue of a statute of limitations on his claims. (Dkt. No. 19.)

9 Plaintiff does not qualify for appointed counsel under 28 U.S.C. § 1915.

10 Plaintiff's request for appointment of counsel is HEREBY DENIED WITHOUT
11 PREJUDICE.

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13 DATED: April 17, 2008

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16 LOUISA S PORTER
United States Magistrate Judge

17 cc: The Honorable Dana M. Sabraw
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